

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

OSCAR FRUTO,

Plaintiffs,

v.

GRAYS HARBOR PUBLIC UTILITIES
DISTRICT NO. 1, a Washington municipal
corporation; DENNIS WALDRON, an
individual,

Defendants.

Case No. 3:07-05584- RBL

ORDER ON NOTICE OF INTENT TO
DISMISS CASE FOR FAILURE TO
RESPOND TO DEFENDANT GRAYS
HARBOR'S MOTION FOR SUMMARY
JUDGMENT

Pending before the Court is Defendant Grays Harbor Public Utility District's (Grays Harbor) Motion for Summary Judgment. [Dkt. # 28.] On October 20, 2008, Defendant Grays Harbor moved for summary judgment on Plaintiff's claims, arguing that there is no basis for recovery under 42 U.S.C. § 1983 and that Plaintiff's takings claim is not ripe. [Dkt. # 28.] Plaintiff did not file a Response with the Court, but instead served a Response to the Defendant on November 21, 2008. [Dkt. # 30.]

Local Rule 7 governs both the timing of any response to a motion and the consequences of failing to respond. "Any opposition papers shall be filed and served not later than the Monday before the noting date." Local Rule W.D. Wash. 7(d)(3). Additionally, "if a party fails to file papers in opposition to a motion, such a failure may be considered by the Court as an admission that the motion has merit." *Id.* at 7(b)(2). Plaintiff has not responded to Defendant Grays Harbor's motion and this may be taken by the Court as an admission that Defendant's motion has merit. Furthermore, Plaintiff's Response should have been filed with the court

1 by November 10, 2008, not simply served on the Defendant seven days past the noting date of November 14.

2 Plaintiff is a pro se litigant, however, and has apparently served a response to the Defendant despite
3 his failure to file with the Court. [Dkt. # 30.] Plaintiff is therefore directed file with the court all documents
4 served on Defendant and to **SHOW CAUSE IN WRITING**, if any, why all claims against Grays Harbor
5 should not be dismissed per Defendant's Motion. [Dkt. # 28.]

6 Defendant's Motion for Summary Judgment may be Granted without further notice on December 5,
7 2008, unless Plaintiff demonstrates the legal merits of his case.

8 **IT IS SO ORDERED.**

9 DATED this 26th day of November, 2008.

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13 RONALD B. LEIGHTON
14 UNITED STATES DISTRICT JUDGE
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